UNITED
NATIONS

A

General Assembly

Distr.
GENERAL

A/AC.96/863
1 July 1996

Original : ENGLISH

EXECUTIVE COMMITTEE OF THE
HIGH COMMISSIONER'S PROGRAMME

Forty-seventh session

NOTE ON INTERNATIONAL PROTECTION 1/ */

I. INTRODUCTION

1. In a year when the protection problems of massive refugee populations continued to dominate UNHCR's agenda, the fact that global refugee numbers have reduced to an estimated fourteen and a half million is a striking, but incongruous, development. The decreased numbers have not been accompanied by a positive change in perception regarding the scope of the refugee problem, however; popular impressions are still of an inexorable rise. The pressure to identify solutions to

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1/ The present Note develops the analysis of the use of comprehensive approaches in attempting to prevent, redress and resolve refugee situations, and examines the positive and enabling contribution to such approaches of a consistent legal framework for protection. The Note explores UNHCR's role in securing and implementing these protection functions in co-operation with States.

*/ This document has already been submitted to the third meeting of the Standing Committee (25-27 June 1996) under the symbol EC/46/SC/CRP.37.

GE.96-02083

the refugee problem is more acute than ever, with reduced numbers failing to make solutions more accessible. Many refugees have not been able to repatriate voluntarily; neither have they been enabled to integrate locally; nor have they been resettled. Formidable crises and emergencies have hardened into impenetrable and seemingly deadlocked dilemmas, resisting - or failing to attract - determined and concerted international efforts at resolution. In many such cases, the prospects seem forlorn, as the quagmire in question waxes and wanes in world attention, as in Angola or Chechnya; or takes centre stage only to slide away, as in Afghanistan and Somalia; or threatens to remain at the periphery of global concern, as in Liberia.

2. The concurrent increase in the estimated number of internally displaced persons, including those for whom UNHCR has a protection and assistance responsibility, reflects the rise in internal conflicts. In some instances, it may also illustrate the growing obstacles to obtaining asylum. Over the past year, hundreds of thousands of asylum-seekers have been admitted and given refuge, in many parts of the world. Elsewhere, however, attitudes to refugee protection and to refugees have ranged from indifference to active hostility, for different reasons. Failure to address all aspects of refugee dilemmas has led to a range of problems, from *refoulement* at the border of refugees who risk death on their return, to elaborate institutional structures severely restricting admission. In addition, some States have constricted the international standards for refugees and asylum-seekers, and have curtailed the duration of their stay. Some countries and regions which have traditionally been among the most generous have in recent years adopted more restrictive approaches, for which they are able to cite models of other regions. At the same time, there have been renewed activities and assistance within countries of origin in an effort to stabilize movements. These developments reflect both a positive and activist approach to upholding rights in the country of origin, and more restrictive efforts to induce would-be asylum-seekers to stay home.

3. One of the positive developments in refugee protection in recent years has been a willingness by States to try to address the needs of all persons who require international protection. These broad groups are not necessarily new or unprecedented; they include persons fleeing persecutory wars or collapsing States, internally displaced persons, and persons fleeing persecution due to their gender. The international community has acknowledged a responsibility to address the international protection need of such groups, and to develop the necessary tools for such protection. (In this connection see also *Progress Report on Informal Consultations on the Development of Guiding Principles for the Provision of International Protection to All Who Need It*, EC/46/SC/CRP.34). In this context, the absence of adequate international co-operation on a significant scale may have contributed to unilateral actions which, by denying refugees and asylum-seekers admission and protection in one country, casts the responsibility onto others. Seeking to transfer responsibility in this manner is obviously unlikely to ensure international protection; at the same time there remains, nevertheless, a strong international consensus in favour of providing international protection to all who need it. The challenge is in reconciling these positions.

4. A review of the past year shows a number of other encouraging developments. In South-East Asia, the Comprehensive Plan of Action (CPA) an approach which included the screening of all asylum-seekers, the return of non-refugees, and the resettlement of refugees, comes to a formal conclusion on 30 June 1996. In South and Central America, UNHCR consolidated a number of its offices, which had, during the 1970s in particular, been among the most active in the world. The world's single largest unresolved refugee problem -- that of the Afghan refugees -- continues after seventeen years: most of the refugees continue to enjoy relatively secure standards of protection, despite some negative developments. On the African continent, dramatic failures of protection have tended to obscure the many instances in which asylum has been granted unstintingly, including, for example, in Uganda, Côte d'Ivoire, and Guinea. Despite difficulties, nearly one million Bosnians and two million Rwandans generally enjoy basic protection. In North America, the Governments of the United States and Canada have issued detailed guidelines clarifying the refugee protection to be provided to refugees fearing gender-based persecution and fleeing situations of civil war respectively. In eastern Europe, UNHCR has engaged in an in-depth and productive dialogue on statelessness and nationality legislation, which will, hopefully, be further promoted through the CIS Conference Programme of Action.

II. THE UTILITY OF COMPREHENSIVE APPROACHES

5. Current developments suggest the likelihood of continued ethnic regional conflicts. Preventing and containing such conflicts, and protecting and finding solutions for the refugees and displaced persons who result, will remain a major preoccupation for the international community. The need to mitigate refugee-producing conflicts, and to put in place preventive elements where possible, while ensuring the observance of international standards in respect of persons in need of international protection -- especially mass movements of persons who, as a group, may be *prima facie* refugees -- makes renewed analysis of comprehensive regional or sub-regional approaches timely.

6. UNHCR's experiences in several major refugee situations prompted the paper *Comprehensive and Regional Approaches to Refugee Problems* (EC/1994/SCP/CRP.3), presented to the Sub-Committee of the Whole on International Protection at its meeting in May 1994. The previous year, the Executive Committee had highlighted the importance of addressing prevention, protection and solutions on a comprehensive and regional basis, encouraging the High Commissioner to undertake consultations in respect of such initiatives. The conference room paper highlighted protection elements within broad strategic approaches towards promoting the overall stability of the society in question and involving diverse actors and components. The Executive Committee, in its discussion, urged UNHCR to develop further comprehensive and regional approaches, which need to be consistent and based on recognized principles of asylum and protection as laid down by the international refugee instruments and in accordance with other human rights standards. Several delegations stressed that such approaches could succeed only where sufficient political will was to be found among the countries concerned. (EC/SCP/89, *Report of the 18-19 May 1994 Inter-Sessional Meeting*).

7. The fact that some of the world's major refugee situations remain resistant to efforts to address causes, or to the creation of conditions enabling large-scale voluntary repatriation, makes this an opportune time to review comprehensive and regional approaches. Viewing displacement as a human problem permits a range of solutions to be considered for the victims of any given displacement: this differentiated approach will also need to encompasses preventive elements where possible. A protection perspective, which emphasises the basic human rights of individuals, is UNHCR's starting-point for the identification of solutions which are just, effective and permanent.

8. Comprehensive approaches do not necessarily overcome the need for refugee protection; rather, they place the problem of lack of national protection - the hallmark of the refugee regime - in its broader context. This examination of multidimensional approaches to situations of mass displacement seeks to highlight the manner in which a legal framework, or a framework of basic principles, may make some situations more tractable, and encourage just and lasting solutions. At the level of the individual, it will seek to ensure that a solution is found, in the form of integration or re-establishment and national protection. As the 1990-1991 Working Group on Solutions and Protection (an open-ended working group composed of Executive Committee members) recalled, solutions are the final purpose of protection, and protection should govern the entire process towards solutions.

9. Seeking peaceful solutions is, of course, the raison d'être of the United Nations, whose Charter recognises the intimate link between peace and human rights. The Secretary-General has defined the defence of human rights as an essential element of United Nations peace operations. UNHCR, for its part, has consistently highlighted the link between non-observance of human rights and refugee flows. In the forty-six years since UNHCR's creation, the codification and strengthening of human rights standards and mechanisms of direct relevance to refugees and individuals threatened with involuntary displacement has added impetus to holistic approaches to protection.

10. The move away from compartmentalization of the issues that provoke involuntary displacement - breaches of peace, abuse of human rights, the re-emergence of ethnic tensions - has also drawn UNHCR closer to the source of population flows. Prevention, while manifestly the ideal, is often diffuse and difficult to secure. Just as focusing entirely on asylum may not be adequate, however, efforts to promote solutions entirely within the country of origin may also be unrealistic. Regarding voluntary repatriation as the most desirable solution should not obscure the fact that some refugee-producing situations may be of a long-term nature. The identification of solutions must accommodate this reality.

11. UNHCR remains willing to provide its support and expertise in formulating such responses and assisting States in identifying more systematically where such responses might be appropriate and feasible. The international rule of law - including relevant human rights and refugee law principles - should be seen as a positive and enabling component, within a broader mosaic of interrelated and to some extent interdependent elements, of any comprehensive approach. Experience has demonstrated, as with the Comprehensive Plan of Action in South-East Asia, that unless there are clearly formulated and agreed basic guidelines for humanitarian

action in charged political environments, it is unlikely to succeed. The agreed legal framework for the screening of Vietnamese boat people was a *sine qua non* for the resolution of that problem. While only part of a wider package of measures in comprehensive approaches, such elements often go to the heart of the underlying and complex human rights issues.

12. Through assertive presence in countries of asylum and origin, supported by active dialogue grounded in protection principles between UNHCR, States of origin and of asylum, and the inclusion of refugee issues on political agendas and in peace negotiations, UNHCR has in some cases been able to promote a "humanitarian space" which is often helpful in facilitating political solutions. Identifying in this process the various aspects of international law relevant to situations of mass displacement can enable a focused and positive course of action to be charted. These basic principles may be critical in helping to prevent new refugee flows, in securing asylum, in enabling repatriation or integration, or in ensuring satisfactory treatment of internally displaced persons; as well as in meeting the needs of the local population who are at risk, and in protecting stateless persons. In this connection, the rule of law can play a central role in strengthening the forces of reconciliation.

13. There are many ways in which a comprehensive approach can be based on a protection framework. It may itself be centred on a formal agreement -- as in Cambodia or Bosnia and Herzegovina manifesting a high level of commitment as well as endowing the arrangements with formal legal and political standing. The surrounding political process, if not the agreement itself, may provide for dispute resolution mechanisms, and positive or negative conditionality linked to compliance with basic principles.

14. The identification, within a comprehensive strategy, of universal norms and standards may provide the foundation or a useful element of an accord. Basing a comprehensive approach on international legal standards can contribute to a climate in which disputes are more likely to be resolved, by providing a relatively dispassionate starting point. A "baseline" - clear, authoritative standards to which all participants are bound and which are consistent among them - can also emphasise the principle of state responsibility for the population in question. Other states who take part in the approach or co-sign the accord acknowledge a broader concept of state responsibility at the level of the international community for the security of peoples.

15. A regime of basic obligations in a comprehensive approach can have an enabling effect, encouraging states in the exercise of what has been called "responsible Statehood", and clarifying responsibilities. The creation of new states or their restoration may be accompanied by lack of capacity to deal with refugee flows or returns, as well as to ensure respect for the rule of law. In certain situations, the involvement of some non-State or *de facto* entities in a comprehensive and solution-oriented approach will be indispensable. This is likely to be the case in respect of disintegrated States, for example, in which the population at large may also be in jeopardy from lawlessness or persecution.

16. UNHCR faces singular challenges in effecting its mandate of promoting solutions to the problems of refugees when even gaining temporary refuge may be resisted; when the underlying causes remain unaddressed; or when the essential conditions to support return are lacking. The multidimensional nature of refugee problems remains self-evident but is too often not reflected in the international responses to them. UNHCR cannot end humanitarian violations or internal conflicts, nor can it rebuild shattered legal systems or prosecute war criminals. Many of the major current refugee problems -- in Rwanda, Afghanistan, Bosnia and Herzegovina or Liberia -- demand regionally-focused and internationally-supported responses. Within those approaches an agreed framework for action is essential as, in a different context, the CIS Conference 2/ has just recognized. The established international principles and norms which underpin the refugee regime are vital to this framework, which will usually also need to encompass broader political, economic and social dimensions.

17. Some of these dimensions were highlighted in the 1995 Note on International Protection, particularly the need for tangible international solidarity with low-income developing countries confronted by a sudden mass refugee influx. The importance of adequate support for development and rehabilitation was also highlighted in the 1995 Conclusions on International Protection as an important element in the sustainable reintegration of refugees returning home. Development and rehabilitation efforts may, as well, contribute to addressing some of the causes of refugee situations and play a valuable part in the context of preventive strategies. Sustained international co-operation is also needed to enhance the ability of many host countries to extend possibilities for local integration.

18. The value of resettlement as one solution within a comprehensive approach has also been recognized. Although mass resettlement such as that which took place from Indochina in the past two decades appears unlikely to be repeated, the resettlement of groups or individuals should continue as a contribution to the promotion of UNHCR's overarching objectives, including the right to seek asylum and the protection of vulnerable cases. Decisions concerning the timing and duration of a resettlement operation must take into account the availability of resettlement places, as well as be sensitive to the possible impact on secondary migrations of refugees and non-refugees. The commitment of those States providing resettlement places to UNHCR remains a key part of UNHCR's broader protection strategy. Further information on current resettlement issues is presented in the conference room paper on Resettlement (EC/46/SC/CRP.32) submitted to this Standing Committee.

2/ The Conference to address the problesm of refugees, displaced persons, other forms of involuntary displacement and returnees in the countries of the Commonwealth fo Independent States and relevant neighbouring States, held in Geneva on 30 and 31 May 1996.

III. THE CONTENT OF PROTECTION-BASED COMPREHENSIVE APPROACHES

19. It is widely acknowledged that the only long-term solutions to major refugee catastrophes, as in the Great Lakes, depend upon comprehensive political responses. While that response is identified and implemented - and for as long as necessary - the granting of asylum remains essential to secure protection from and solutions to actual or threatened human rights abuse, violence and war. The exploration of broad approaches should not obscure the fact that the right to seek and enjoy asylum from persecution and danger is a fundamental human right, and frequently the only option, at least in the short term. Asylum is, therefore, an essential element of broader approaches. Similarly, international commitment to the standards contained in the Convention and Protocol, and their regional complement, the 1969 OAU Convention, remain central to comprehensive approaches to refugee situations. 3/ At the same time, a broader legal framework for solutions can temper the tendency to isolate refugees, and refugee law, from international human rights law of universal application.

20. Within the substantive content of protection frameworks, human rights standards have a central place. In addition to the linkage of human rights to peace, the inclusion of human rights and protection standards contributes to setting the pace at which the refugee problem, or the problem of involuntary displacement, can come to a sustainable solution. Without such standards, responses to complex refugee situations may seek to address the response difficulties of the host country or of the international community more than the resolution of the underlying problem and the protection and welfare of the refugees. Unrealistic timetables for repatriation to places and communities unequipped to cope may result in human rights violations and fresh crises; harsh and inhumane conditions of stay, in some cases amounting to prolonged detention, imposed to deter future arrivals, are often in breach of human rights standards. Similarly, ensuring respect for the basic rights of returnees during the post-return period is essential.

21. Standards are of little use in the abstract. In many cases, the fact of accession by the country of origin to a particular international treaty will be irrelevant to the refugee's decision to repatriate, or, evidently, to the existence of serious human rights abuses. What matters is the restoration of a human rights environment in which refugees are protected, or integrated, or able safely to repatriate, or in which persons need not flee. Encouraging such an environment to take hold often takes time. Successful comprehensive approaches that encompass reconciliation and build on established norms recognize that where there has been no tradition of the rule of law, or where respect for it has been weak, its rapid restoration or establishment will not be possible. It is nonetheless essential that the trauma of displacement (for the individual, for the community, or for the

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3/ The number of States parties to the 1951 Convention relating to the Status of Refugees, or its 1967 Protocol, now stands at 131. States parties to the OAU Convention governing the specific aspects of reguee problems in African now number 41.

nation) be met with a response which offers long-term certainty and security. The Executive Committee has recognized this element in its Conclusion No. 69 on *Cessation of Status*, (A/AC.36/804, para.22), in which it underlined that changed circumstances were to be of a "profound and enduring nature" for the cessation clauses to apply.

22. The essence of any comprehensive approach is its integrity. In the event that not all participants observe the agreed approach, or implement some aspects in isolation, the strategy is unlikely to succeed. The 1994 Conference Room Paper on Comprehensive and Regional Approaches (EC/1994/SCP/CRP.3) noted that the "comprehensiveness" of approaches has varied, and that it is unrealistic to work from a single blueprint. The brief summaries of UNHCR's experiences in CIREFCA, the CPA, the comprehensive political settlement in Cambodia, the former Yugoslavia, and Mozambique illustrated both similarities and differences, notably as to whether the proposed measures address existing conflict and refugee-producing situations or post-conflict measures, and whether they encompass both humanitarian and political measures. To these should now be added the CIS Conference process, an ambitious effort to address both potential involuntary movements as well as earlier and ongoing displacement in a highly complex region.

23. The recently-concluded CIS Conference and the intensive process of consultations which preceded it represent an attempt by the international community to substantiate the notion of prevention in a particular regional context. Based on the consensus that unmanaged mass movements in this context could affect stability in this region, the preparatory process encouraged the twelve countries concerned to identify and pinpoint the scope and nature of population movements in those countries, and to clarify the categories of concern. The Conference provided an opportunity for Governments and concerned organizations to consolidate their expertise and collectively to address humanitarian issues, notably in formulating comprehensive strategies to begin tackling the existing problems and, as well, to avert future mass movements. By raising awareness of the problems, and translating this into an agreed Programme of Action, a forward-looking approach has been adopted. The success of this undertaking by the States concerned will, as in all such endeavours, depend on continued commitment to the Programme of Action, and will also require sustained international support for its implementation.

24. UNHCR had, in its earlier paper, identified some of the elements of a protection framework for strategies addressing particular situations of involuntary displacement. Protection-based comprehensive approaches would normally include appropriate reference to the international refugee instruments. Under all circumstances, *non-refoulement*, including non-rejection at frontiers, must be respected. The displaced should receive admission to safety, and UNHCR should be given unrestricted access to persons of its concern. Their essential human rights should be enumerated and guaranteed. Particular rights may be emphasised, including personal security, non-discrimination, and family unity; as may the protection and assistance needs of vulnerable groups. Securing these rights are important elements in confidence building for refugees, and for the international community in

assessing the viability of the agreed approach. Benchmarks may be established which translate human rights standards into their local context: for example, specifying what conditions will signal the attainment of freedom of movement, freedom of expression, or non-discrimination locally.

25. Impartial and effective procedures for monitoring, reporting and verification, such as those which the international community sought to establish in Cambodia, El Salvador, Guatemala, and Haiti, are an essential corollary to the inclusion of human rights guarantees, as are redress mechanisms, and appropriate amnesties. International presence alone will not prevent human rights abuses, particularly in the context of widespread conflict, but it may contribute to an increase in stability and heighten pressure on perpetrators. Similarly, establishing the principle of international accountability, as with the international criminal tribunals for the former Yugoslavia and Rwanda, can be a key aspect of restoration of peace, reconciliation and the rule of law. The effectiveness of these tribunals is of direct interest to UNHCR and to prospects for larger-scale and safe return.

26. The broad respect for the rights of populations which is needed to secure solutions, whether in the country of origin or elsewhere, requires a particular climate in order to flourish. Enhancement of the institutions of civil society, including non-governmental organizations, legal and judicial structures, and a free media, for example, as well as appropriate legislation in accordance with international standards, may form part of this broader environment. The provision of supportive components such as legal rehabilitation, constitutional reform, and technical advice may need time, resources, and continued political commitment on the part of all actors. The attainment of these is often difficult when the process focuses on shorter-term goals, such as elections, as its principal objective. The possible contribution of UNHCR in the area of legal and judicial capacity-building is outlined in the document (EC/46/SC/CRP.31) .

27. Where persistent conflict frustrates any solution, both peace-keeping and law and order mechanisms will be needed. Such conflicts may leave a legacy of impunity for abuses, gangsterism and delinquency which inhibit the enjoyment of security. Similarly, failure to demobilize or disarm militaries, militias or factions can have severe human rights implications. In the context of comprehensive approaches, these concerns, as well as codes of conduct for belligerents, may need to extend explicitly to non-State actors.

28. Within this overall context, the need for State responsibility to be acknowledged and strengthened was highlighted by the 1991 *Report of the Working Group on Solutions and Protection* (EC/SCP/64, para. 54f) to the forty-second session of the Executive Committee. The Working Group noted that

> "Acceptance of State responsibility is an element in averting mass flows of refugees generally and in facilitating durable solutions to their problems. This responsibility, in particular as it regards countries of origin, includes addressing the causes of mass flows - <u>inter alia</u>, human

> rights violations, internal conflicts, external aggression, internal and international social and economic injustices - in both a preventive and curative manner, as well as facilitating the return and reintegration of nationals in safety and dignity."

An essential characteristic of the exercise of such State responsibility is that it encompasses all citizens without discrimination, and is not selective or circumscribed by arbitrary temporal or other limitations. This is particularly crucial in the contexts noted by the Working Group, namely those of return and reintegration, and prevention. In post-conflict repatriation, for example, it is essential that the necessary amnesties are non-discriminatory.

29. The responsibility of the State of origin cannot always be brought to bear, however, notably where a downward spiral of anarchy and violence has led State authority to be deemed as having collapsed, or failed. A number of the current examples of refugee-generating situations suggest that no resolution can be foreseen within a reasonable timeframe without prolonged external involvement, to seek an end to hostilities, to ensure the protection of people, to secure the functioning of basic facilities, and to provide support until peace and reconciliation take root. In these situations, the premature exclusion or withdrawal of international actors may have a direct bearing on the durability of comprehensive strategies.

30. Similar concerns regarding the ability of some States to assume responsibilities relating to protection, prevention and solutions should be borne in mind in considering regional approaches to particular situations. Widespread instability or lack of resources may inhibit a given region from furnishing the components of a comprehensive approach; in such cases, sustained international co-operation and support in various sectors will be crucial.

31. Various proposals have encouraged the High Commissioner to play an active part in the identification of selected comprehensive and regional approaches. . The Working Group on Solutions and Protection referred to the value of regional and international initiatives aimed at encouraging and facilitating dialogue. In 1985, the thirty-sixth session of the Executive Committee, in a Conclusion (A/AC.96/673 para.115, 5.(i)) subsequently endorsed by the General Assembly, insisted that from the outset of a refugee situation, the High Commissioner should at all times keep the possibility of voluntary repatriation for all or for part of a group under active review, to be pursued when the High Commissioner deems appropriate, and went on to note that

> "When, in the opinion of the High Commissioner, a serious problem exists in the promotion of voluntary repatriation of a particular refugee group, she may consider for that particular problem the establishment of an informal *ad hoc* consultative group which...should in principle include the countries directly concerned."

The suggestion actively to focus on selected situations in this manner thus encompasses those instances where voluntary repatriation is appropriate for all of a group; for only part of a group; and where a particular problem exists in the promotion of voluntary repatriation as a solution. In those cases where voluntary

repatriation is not appropriate for all or part of a group, other solutions and approaches will evidently have to be identified.

IV. CONCLUDING OBSERVATIONS

32. The objective of protection is to secure for involuntarily displaced populations those fundamental rights and freedoms which a State should afford its citizens. Attaining this objective entails actively mobilising the appropriate solution for the refugee. As the High Commissioner has stated, however, UNHCR can give meaning to its mandate of international protection and solutions only to the extent that States themselves are willing to meet their responsibilities. These responsibilities include ensuring and maintaining conditions which do not compel people to flee in fear, granting asylum, creating conditions conducive to voluntary repatriation, taking steps to meet essential humanitarian needs and co-operating with countries on whom the acute needs weigh most heavily.

33. In contributing to this process, UNHCR's perspective - that is, in viewing refugee issues neither in isolation from broader human rights concerns, nor divorced from their inherently political context - may assist in the identification of protection-based comprehensive approaches. Further considerations which may be relevant to such approaches are contained in the conference room papers submitted to this Standing Committee on ensuring international protection to all who need it; support for legal capacity-building, and the return of persons not in need of international protection. A protection framework for solutions can, in various ways, contribute to breaking vicious cycles of displacement and violence. To this end, the support of the Executive Committee in the active identification of appropriate comprehensive and regional strategies to address specific problems of displacement would be welcome.